

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

BRIAN KEITH ALFORD,

Plaintiff,

v.

Case No. 2:19-cv-1497  
CHIEF JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Chelsey M. Vascura

GARY MOHR, *et al.*,

Defendants.

**OPINION AND ORDER**

Currently pending before the Court is Plaintiff Brian Keith Alford's ("Plaintiff" or "Alford") Objections to the Magistrate Judge's Report and Recommendation (ECF No. 10). For the reasons stated herein, Plaintiff's Objections to the Report and Recommendation (ECF No. 10) are **OVERRULED**; the Report and Recommendation (ECF No. 9) is **ADOPTED**; and Plaintiff's action is **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Plaintiff, an inmate in an Ohio state penitentiary proceeding without the assistance of counsel, commenced this action on April 12, 2019 by filing a Motion for Leave to Proceed *In Forma Paupers*, to which his Complaint was attached. (See ECF No. 1). Magistrate Judge Chelsey M. Vascura issued a Report and Recommendation on April 26, 2019, recommending that the Court sever and dismiss without prejudice Plaintiff's claims against staff members of the London Correctional Institution ("LCI") and Toledo Correctional Institution ("TCI"). (April 26, 2019 R&R at 3 [ECF No. 3]). Magistrate Judge Vascura further recommended that the Court deny Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* with respect to Plaintiff's remaining

claims against the Adult Parole Authority (“APA”) defendants. (*Id.* at 5).

On July 10, 2019, the Court overruled Plaintiff’s objections to the Report and Recommendation and adopted the Report and Recommendation in full. (*See generally* July 10, 2019 Op. & Ord. [ECF No. 5]). As such, the Court severed and dismissed Plaintiff’s claims against the LCI and TCI Defendants, denied Plaintiff’s Motion for Leave to Proceed *In Forma Pauperis*, and ordered Plaintiff to pay the \$400 filing fee within thirty (30) days of the issuance of the Court’s Opinion and Order. (*Id.* at 10). The Court further notified Plaintiff that his failure to pay the full \$400 filing fee within thirty days would result in the dismissal of his remaining claims against the APA Defendants. (*Id.*). Plaintiff moved to alter or amend the Court’s July 10, 2019 Opinion and Order, and the Court denied that motion. (*See* ECF Nos. 6, 7).

To date, Plaintiff has neither paid the \$400 filing fee or requested an extension of time to do so. Accordingly, Magistrate Judge Vascura issued a Report and Recommendation on August 22, 2019, and recommended that:

the Court **DISMISS THIS ACTION WITHOUT PREJUDICE** under Rule 41(b). It is further **RECOMMENDED** that the Court not assess the filing fee in this matter. Finally, it is **RECOMMENDED** that the Court order Plaintiff to list 2:19-cv-1497 as a related case if he re-files this action.

(Aug. 22, 2019 R&R at 3 [ECF No. 9]). Plaintiff’s Objections to the Report and Recommendation followed. (*See generally* Obj. to Aug. 22, 2019 R&R [ECF No. 10]). However, Plaintiff’s objections are merely reiterations of arguments that the Court has already considered and found to be unpersuasive. Plaintiff again argues that the imminent danger exception applies to his claims and, as such, he should be allowed to proceed *in forma pauperis*. (*See generally id.*). The Court has twice rejected this argument. (*See* July 10, 2019 Op. & Ord.; Aug. 20 Op. & Ord. [ECF No. 7]). Nothing has materially changed since this Court last considered Plaintiff’s argument on this matter, and the Court declines to reconsider it further. Defendant also asks that the Court certify

that an appeal of the Court's denial of his Motion for Leave to Proceed *In Forma Pauperis* would be taken in good faith. But the Court has previously certified that such an appeal would not be taken in good faith. (July 10, 2019 Op. & Ord. at 10). In his Objections, Plaintiff fails to address the Magistrate Judge's recommendation that this Court dismiss the case at bar for failure to prosecute.

Thus, Plaintiff's Objections to the Report and Recommendation (ECF No. 10) are **OVERRULED**. The Magistrate Judge's Report and Recommendation (ECF No. 9) is **ADOPTED**. Accordingly, this case is **DISMISSED WITHOUT PREJUDICE** under Rule 41(b). The Court shall not assess the filing fee in this matter. And, if Plaintiff re-files this action, Plaintiff is **ORDERED** to list 2:19-cv-1497 as a related case.

**IT IS SO ORDERED.**

9-16-2019

DATE

  
EDMUND A. SARGUS, JR.  
CHIEF UNITED STATES DISTRICT JUDGE